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CHICAGO, IL 60603-3406

**MAILED**

**MAY 03 2010**

**OFFICE OF PETITIONS**

In re Patent No. 6,940,016  
Issue Date: September 6, 2005  
Application No. 10/635,126  
Filed: August 6, 2003  
Attorney Docket No. 8684/91061

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**DECISION ON PETITION  
UNDER 37 CFR 1.137(b)**

This is a decision in response to the petition, filed February 22, 2010, which is being treated as a petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification of the filing in a foreign country of an application directed to the invention disclosed in the subject application. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner indicates that the instant nonprovisional application became the subject of an application filed in a foreign country on May 6, 2004. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country. Therefore, pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), petitioner failed to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification to the USPTO of the filing of a counterpart application in an eighteen month publication country must be accompanied by:

- (1) the required reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

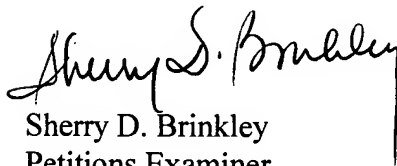
While this application has been abandoned for an extended period of time, the U.S. Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting

the statement that “the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.” *See Changes to Patent Practice and Procedure*, 62 *Fed. Reg.*, at 53160 and 53178; 1203 *Off. Gaz. Pat. Office*, at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the U.S. Patent and Trademark Office).

Therefore, the failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 U.S.C. § 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

Since this application matured into Patent No. 6,940,016 on September 6, 2005, no further action is required.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3204.

A handwritten signature in black ink, appearing to read "Sherry D. Brinkley". The signature is fluid and cursive, with a long vertical line extending downwards from the end.

Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions